

**From:** Seth L. Blumberg  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

I am writing to comment on the Proposed Final Judgment (PFJ) in the Microsoft anti-trust case. I do not believe that the PFJ is an adequate response to Microsoft's anti-competitive practices; indeed, it gives Microsoft considerable leverage against what various internal memoranda (such as the notorious "Halloween Document") have indicated it considers its most serious competition, to wit, Open Source software.

The definitions in Part VI of the PFJ differ in many ways from those in the Findings of Fact, to the considerable benefit of Microsoft. For instance, Definition J ("Microsoft Middleware") as written permits Microsoft to evade designation of its products as middleware simply by changing the version numbering and/or distribution schemes, and Definition K ("Microsoft Middleware Product") excludes numerous Microsoft products that fit the definition of middleware given by the Findings of Fact (including Microsoft.NET and C#, which Microsoft has designated as its choice to replace Java). Furthermore, Definition U excludes several families of Microsoft operating systems, such as Windows CE and Windows XP Tablet PC Edition; programs written for Windows 2000 can in many cases be made to run unchanged on these operating systems.

The worst feature of the PFJ, however, is that it permits Microsoft to stifle competition from the Open Source sector. ISVs writing operating systems that compete with Windows Operating Systems Products cannot use the information that the PFJ forces Microsoft to disclose--its use is strictly limited "for the sole purpose of interoperating with a Windows Operating System Product." This excludes several extant products, such as WINE.

It is clear that the PFJ will not serve the desired purpose--to "terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future" (Court of Appeals ruling, section V.D, p. 99). It must be extensively revised.

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These comments do not represent the opinion of Clark Hill PLC.